

§ 780.603

5); *Hearnsberger v. Gillespie*, 435 F. 2d 926 (C.A. 8). However, under section 13(b)(13) an employee who is employed by a farmer in agriculture as well as in livestock auction operations in the same workweek will not lose the overtime exemption for that workweek, if certain conditions are met. These conditions and their meaning and application are discussed in this subpart.

REQUIREMENTS FOR EXEMPTION

§ 780.603 What determines application of exemption.

The application of the section 13(b)(13) exemption depends largely upon the nature of the work performed by the individual employee for whom exemption is sought. The character of the employer's business also determine the application of the exemption. Whether an employee is exempt therefore depends upon his duties as well as the nature of the employer's activities. Some employees of the employer may be exempt in some weeks and others may not.

§ 780.604 General requirements.

The general requirements for exemption under section 13(b)(13) are as follows:

- (a) Employment of the employee "primarily" in agriculture in the particular workweek.
- (b) This primary employment by a farmer.
- (c) Engagement by the farmer in raising livestock.
- (d) Engagement by the farmer in livestock auction operations "as an adjunct to" the raising of livestock.
- (e) Payment of the minimum wage required by section 6(a)(1) of the Act for all hours spent in livestock auction work by the employee.

These requirements will be separately discussed in the following sections of this subpart.

§ 780.605 Employment in agriculture.

One requirement for exemption is that the employee be employed in "agriculture." "Agriculture," as used in the Act, is defined in section 3(f) as follows:

- (f) "Agriculture" includes farming in all its branches and among other things in-

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cludes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

An employee meets the tests of being employed in agriculture when he either engages in any one or more of the branches of farming listed in the first part of the above definition or performs, as an employee of a farmer or on a farm, practices incident to such farming operations as mentioned in the second part of the definition (*Farmers Reservoir & Irrigation Co. v. McComb*, 337 U.S. 755). The exemption applies to "any employee" of a farmer whose employment meets the tests for exemption. Accordingly, any employee of the farmer who is employed in "agriculture," including laborers, clerical, maintenance, and custodial employees, harvesters, dairy workers, and others may qualify for the exemption under section 13(b)(13) if the other conditions of the exemption are met.

§ 780.606 Interpretation of term "agriculture."

Section 3(f) of the Act, which defines "agriculture," has been extensively interpreted by the Department of Labor and the courts. Subpart B of this part 780 contains those interpretations which have full application in construing the term "agriculture" as used in the 13(b)(13) exemption.

§ 780.607 "Primarily employed" in agriculture.

Not only must the employee be employed in agriculture, but he must be "primarily" so employed during the particular workweek or weeks in which the 13(b)(13) exemption is to be applied. The word "primarily" may be considered to mean chiefly or principally (*Agnew v. Board of Governors*, 153 F. 2d 785). This interpretation is consistent with the view, expressed by the sponsor